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Before the

Federal Communications Commission

proposed tower site. For example, in the case cited by ORA, Global Information Industries, Inc., FCC 93R-26, released June 17, 1993, the applicant that failed to obtain "reasonable assurance" of its tower site had "no written confirmation or other corroboration that the site was made available..." Global, supra at ¶20 (emphasis added) a courtesy copy of which is attached as Exhibit A. Here, Ringer has not one but two separate letters from the owner of his proposed tower site, one of which was provided as recently as two weeks ago. See Ringer's June 9, 1993 Opposition at Exhibits 1 and 4. More importantly, in that case, the site owner stated that he had only given permission for the use of his site to another applicant and that he had not discussed or reached any understandings with the applicant in question on the use of his property. See Global, supra at ¶17. In this case, the recent letter from Ringer's site owner shows that Ringer continues to have "reasonable assurance" of the use of his proposed tower site. See Ringer's June 9, 1993 Opposition at Exhibit 4.

2. Finally, the Global decision involved an applicant that admittedly did not discuss any terms with its proposed tower site owner. See Global, supra at ¶17. In this case, both of Ringer's site letters show that the most important lease terms (price, location of tower, specific equipment to

holds no precedential value.

The June 7, 1993 Fry Memorandum Does Not Change Ringer's Reasonable Assurance

3. Through document production, the parties obtained a copy of a memorandum from Carl B. Fry to Shellee Davis and Ardeth Frizzell dated June 7, 1993. See Exhibit B. In this memorandum, Mr. Fry, the representative for the owner of Ringer's tower site, states that Ringer's counsel asked that additional language be added to Fry's most recent correspondence to all of the parties specifying the WBBY tower site. Id. Fry states that "Although I did not adopt the specific language that Mr. Ringer's legal counsel requested, I prepared an additional paragraph acceptable to his legal counsel and included it in the letter." Id. ORA concludes that this statement somehow shows that Ringer and Fry "have a difference of opinion as to the meaning of the December 1991 tower site letters." Reply at p. 2. However, nothing could be farther from the truth.

4. As a review of the letter sent to Mr. Fry by Ringer's counsel shows, the language that Fry was asked to add to his recent June 7, 1993 letter and the actual language that he adopted are very similar. See Exhibit C. Apart from some difference in grammar and verbiage, the additional paragraphs say exactly the same thing: that Mid-Ohio received Ringer's financial showing before the 60-day deadline outlined in its original site letter, that the

showing was satisfactory and that Mid-Ohio's original letter remains in force today. ORA's conclusions to the contrary amount to little more than wild speculation.

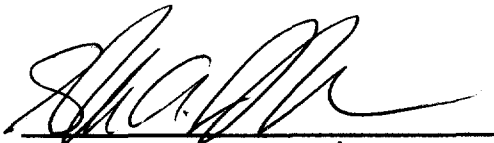
5. Therefore, with respect to these two additional matters raised in its Reply, ORA has failed to show that Ringer failed to possess the necessary reasonable assurance for his proposed tower site location.

WHEREFORE, the above-premises considered, David A. Ringer once again respectfully requests that the Motion To Enlarge Issues filed by Ohio Radio Associates, Inc., be **DENIED**.

Respectfully submitted,

DAVID A. RINGER

By:



Arthur V. Belendiuk
Shaun A. Maher
His Attorneys

SMITHWICK & BELENDIUK, P.C.
1990 M Street, N.W.
Suite 510
Washington, DC 20036
(202) 785-2800

June 24, 1993

EXHIBIT A

Global Information Technologies, Inc., FCC 93R-26, released
June 17, 1993.

DECISION

Before the
Federal Communications Commission
Washington, D.C. 20554

Adopted: June 2, 1993;

Released: June 17, 1993

By the Review Board: MARINO (Chairman),
BLUMENTHAL, and GREENE.¹

Board Chairman MARINO:

MM Docket No. 87-250

In re Applications of

GLOBAL INFORMATION File No. BPCT-861219KG
TECHNOLOGIES, INC.

TEXSTAR File No. BPCT-870212KM
COMMUNICATIONS, LTD.

FRONTIER File No. BPCT-870212KN
BROADCASTING, INC.

FREDERICKSBURG File No. BPCT-870212KP
CHANNEL 2

HAL S. WIDSTEN File No. BPCT-870212KT

STONEWALL File No. BPCT-870212KI

1. Six applicants remain in this comparative broadcast proceeding for authority to construct a television station on Channel 2 at Fredericksburg, Texas: Global Information Technologies, Inc. (Global); TexStar Communications, Ltd. (TexStar); Frontier Broadcasting, Inc. (Frontier); Fredericksburg Channel 2 (FC2); Hal S. Widsten (Widsten); and Stonewall Broadcasting, Inc. (Stonewall). Before the Review Board are: (1) the *Initial Decision (I.D.)*, 4 FCC Rcd 5445 (1989), of Administrative Law Judge Edward Luton (ALJ) granting Stonewall's application for the Fredericksburg facility; (2) a *Supplemental Initial Decision (S.I.D.)*, 6 FCC Rcd 6912 (1991), disqualifying TexStar following the Board's remand for further hearing on that applicant's financial qualifications; and (3) the parties' exceptions and replies to both decisions.² The parties have also furnished supplemental engineering data and related comments³ in accordance with our instruction in *Global Information Technologies, Inc. (Coverage Order)*, 7 FCC Rcd 3795 (Rev. Bd. 1992).

Bd. 1990). Following a review of supplemental financial information submitted by TexStar, the Board remanded the proceeding to the ALJ for further hearing "[t]o determine whether TexStar Communications, Ltd. was and is financially qualified to be a Commission licensee." *Global Information Technologies, Inc. (Remand Order)*, 5 FCC Rcd 3385, 3387 (Rev. Bd. 1990). The ALJ thereafter resolved the issue adversely to TexStar. *S.I.D.*, ¶¶ 39-54.

3. Based on our review of the ALJ's findings and conclusions in light of the pleadings and the evidentiary record, and for the reasons set forth below, we affirm the disqualification of TexStar and Frontier. Because, however, our analysis of the remaining applicants under the standard comparative issue differs from the ALJ's, we modify the *I.D.* and conclude that FC2's application is preferred. We turn first to the *S.I.D.*'s disqualification of TexStar and its exceptions thereto, beginning with a brief chronological review of the facts.

FINANCIAL QUALIFICATIONS

4. *Background.* Lesvia Guerra-Cox filed TexStar's application on February 12, 1987, certifying that (FCC Form 301, Section III (April, 1985 ed.)):

sufficient net liquid assets are on hand or are available from committed sources to construct and operate the requested facilities for three months without revenue.

S.I.D., ¶ 3. In subsequent amendments reporting the formation of a partnership and the addition of partners, she confirmed the continuing validity of the information contained in the application, including the certification to financial qualifications. *Id.* at ¶¶ 4-5. In December 1987, under an order to exchange documents illustrating a principal's involvement in obtaining application financing, TexStar produced portions of two letters from NBC Bank signed by its president, Charles D. Lutz, III. The entire text of the first letter, dated February 10, 1987, was redacted, but the second letter, dated April 6, 1987, was produced intact. It invited Guerra-Cox and her new general partner to meet with Lutz "to discuss various ways in which we might be able to assist you in meeting your financial needs." 5 FCC Rcd at 536. At her deposition on January 22, 1988, Guerra-Cox testified that NBC Bank was the "sole source" of financing to support TexStar's financial certification and that she had spoken with no other financial institutions about financing the application prior to its filing, including her "local bank," the First RepublicBank. *S.I.D.*, ¶¶ 6, 30, nn.2-3. Stonewall filed a motion to enlarge issues on February 18, 1988, alleging that TexStar lacked financial qualifications.

5. On February 24, 1988, Guerra-Cox repeated in testimony before the ALJ at the initial hearing that TexStar's financial certification was premised on the February 10, 1987 letter from NBC Bank and that TexStar's "sole basis for construction and assurance for the funds for the operation of the station are [sic] the NBC [Bank] letter." *Id.* at ¶ 7, n.4; Tr. 331. In its opposition to Stonewall's issue request, filed on March 10, 1988, TexStar reiterated its exclusive reliance on NBC Bank stating (Stonewall Exh. R-19 at 3 (emphasis in original, footnotes omitted)):

As was repeatedly testified to during depositions, TexStar has specifically *not* sought alternative sources of financing, *e.g.*, from limited partners, due to the fact that it had *already* secured an assurance from a financial institution to support the requirement that it obtain a "reasonable assurance" of the availability of funds to construct and initially operate its proposed station prior to filing its application.

The ALJ denied Stonewall's motion. *Memorandum Opinion and Order*, FCC 88M-1514, released May 20, 1988.

6. Stonewall continued its attack on TexStar's financial qualifications in contingent exceptions to the *I.D.* In its reply submitted to the Board on August 31, 1989, TexStar continued to maintain that (Stonewall Exh. R-20 at 4 (emphasis in original, footnote omitted)):

TexStar's certification is based upon a letter to TexStar from the NBC Bank of San Antonio, Texas, dated February 10, 1987. Cox Dep. TR 69. As was repeatedly testified to during depositions, TexStar has specifically *not* sought alternative sources of financing

Upon the Board's initial review of the exceptions, it ordered TexStar, on January 26, 1990, to produce the full text of the February 10, 1987 NBC Bank letter and "all documents and related evidence that would support a continuing bank loan commitment." 5 FCC Rcd at 536. On March 7, 1990, TexStar disclosed for the first time the complete text of the bank letter upon which its financial certification was based. That letter opens (TexStar Response to Review Board Order, Attachment 1):

Thank you for stopping by and discussing with us your application for Channel 2 in Fredericksburg, Texas, filed on behalf of TexStar Communications. We understand your financial needs to construct and operate the station for six months should not exceed \$8,000,000.00. Although we have not reviewed the financial information required by us to fully consider a loan commitment, we are seriously interested in exploring ways in which we could assist you in meeting your financial needs.

See also 5 FCC Rcd at 3385 (where the letter is reproduced in full). In addition to the NBC Bank letter, TexStar's submission to the Board included letters from two other banks: (1) a letter dated January 28, 1988, from First RepublicBank; and (2) a letter dated March 1, 1990, from the First National Bank of Kerrville. TexStar Response, Attachments 2, 6.

7. In comments accompanying its submission, TexStar asserted that it has continually met the Commission's reasonable assurance standard for financial qualifications under any of *three* funding sources. *Id.* at 9. TexStar explained that Lutz was no longer with NBC Bank and that the bank had refused Guerra-Cox's request for "a current letter of assurance explaining that although Mr. Lutz was no longer at NBC they were still willing to work with us." *Id.*, Attachment 5 at 4. TexStar maintained, however, that the bank did not "revoke" the letter. *Id.* at 5 n.1. Contrary to all of its prior representations, TexStar then claimed that it has had, since before its application was filed in 1987, a *second* source of bank financing to support its financial

certification, and that this alternative assurance "can stand alone in support of TexStar's initial qualifications." *Id.* at 13. TexStar revealed that Guerra-Cox had contacted her local bank, First RepublicBank, about financing her application in January 1987, and that she had obtained from that institution a verbal assurance of funding *before* filing the application. Republic's purported pre-filing assurance was reduced to writing one year later, on January 28, 1988,

(absent grant of a good cause amendment, the only relevant issue is what "exactly [the applicant's] financial proposal was at the time of certification").

9. With regard to Guerra-Cox's purported reliance on a verbal assurance from Republic, the ALJ concluded, based on TexStar's repeated acknowledgements prior to the involuntary unveiling of the NBC Bank letter, that its original

reasonable assurance of having sufficient funds to construct the proposed station and operate it without revenue for three months before the applicant certifies its financial qualifications. In other words, the applicant may not certify its financial qualifications and then arrange financing. *Pepper Schultz*, 103 FCC 2d 1052, 1058-59 ¶ 11 (Rev. Bd. 1986), review denied, 2 FCC Rcd 1476 (1987), recon. granted in part, [] 3 FCC Rcd 1200 (1988).

In order to prove reasonable assurance of financial qualifications at the time of certification, the applicant must adduce probative evidence that, prior to certification, it engaged in serious and reasonable efforts to ascertain predictable construction and operation costs. To establish the availability of funds to meet these estimated expenses, the applicant must provide substantial and reliable evidence showing "sufficient net liquid assets on hand, or committed sources of funds to construct and operate for three months without revenue"

Northampton, 4 FCC Rcd at 5518-19, recon. denied, 5 FCC Rcd 3075 (1990), *aff'd* 941 F.2d 1214 (D.C. Cir. 1991).

12. In the event that the committed source of funds upon which an applicant's financial certification relies becomes unavailable after the application's filing, the applicant is required to report this change in status pursuant to § 1.65 of the Commission's rules, 47 CFR § 1.65. See *Texas Communications Limited Partnership*, 7 FCC Rcd 3186, 3187 (1992), *denying recon.* 6 FCC Rcd 5191 (1991); *Edwin A. Bernstein*, 6 FCC Rcd 6841, 6842 (Rev. Bd. 1991); *Marlin Broadcasting of Central Florida, Inc.*, 5 FCC Rcd 5751, 5172-73 & n.9 (1990), *denying rev.* 4 FCC Rcd 7945 (Rev. Bd. 1989) (subsequent history omitted). Should it thereafter obtain a new source of funds, in order to re-establish its financial qualifications, the applicant must amend its application to include the revised financial proposal. See *Texas Communications*, 6 FCC Rcd at 5192. If the amendment is filed after the application's designation for hearing, it must be accompanied by a good cause showing sufficient to meet the requirements of § 73.3522(b) and the six-part test enunciated in *Erwin O'Conner Broadcasting Co.*, 22 FCC 2d 140, 143 (1970). See *Capitol City Broadcasting Co.*, 7 FCC Rcd 2629 (1992). An essential ingredient of the good cause showing for acceptance of a post-designation financial plan is a demonstration that the applicant was *initially* financially qualified. See *Aspen FM, Inc.*, 6 FCC Rcd at 1603; *see also, e.g., Pontchartrain Broadcasting Co., Inc.*, 8 FCC Rcd 2256, 2256-57 (1993). The Commission recently noted that: "[w]e have been increasingly stringent in enforcing this requirement." *Georgia Public Telecommunications Commission*, 7 FCC Rcd 7996, 7999 (1992).

13. TexStar concedes that its initial financial qualifications were exclusively based on NBC Bank. Accordingly, in order to modify its financial plan to rely on assurances received from Republic, or from any other funding source, TexStar must establish the validity of those initial assurances from NBC Bank. Because TexStar has abandoned its reliance on NBC Bank and presented no evidence to support its initial financial qualifications based on arrangements with that bank, we must affirm the *S.I.D.*'s

disqualification of TexStar for its failure to meet its burden of proof that it was financially qualified when it executed its application in 1987. *Aspen FM*, 6 FCC Rcd at 1603. Therefore, we must also agree that TexStar may not, as a matter of law, establish its financial qualifications through arrangements concluded with other financial institutions. *Id.*; *Texas Communications*, 6 FCC Rcd at 5192. We further reject TexStar's argument that it should, despite *Aspen FM*, be permitted to retroactively base its initial assurances of financial qualifications on the Guzman oral assurance in view of the clear precedent to the contrary and: (1) TexStar's repeated assertions that it contacted no other financial institutions – including Republic – before filing the application; (2) its continuation of this representation before the Board in reply exceptions following the release of the Commission's decision in *Northampton*; and (3) its silence as to the existence of the oral assurance (and its corresponding failure to produce a copy of the 1988 Republic letter in discovery) until the Board's 1990 *Production Order*. See *Sunshine Broadcasting, Inc.*, 6 FCC Rcd 5981 (Rev. Bd. 1991) (*post hoc* rationalization at hearing regarding existence of an alternative oral financing agreement insufficient to overcome doubts raised by principal's earlier contrary deposition testimony), *recon. denied*, 7 FCC Rcd 493 (Rev. Bd. 1992). Nor does *Opportunity Broadcasting of Shreveport*, 6 FCC Rcd 1499 (Rev. Bd. 1991), cited by TexStar, support its thesis. There an applicant whose lending bank had failed long ago was permitted to rely on financing from a limited partner because the applicant had the alternative financing plan "from the outset." *Id.* at 1501. Here, we hold TexStar to its original representations that it had no such alternative plan at the outset. Compare *Coastal Broadcasting Partners*, 5 FCC Rcd 734, 734-35 (Rev. Bd. 1990) (remand to determine whether applicant attempted to expand her original financial proposal, without proper amendment, from sole reliance on the proceeds from the sale of her stamp and coin collection, to reliance on *all* of her personal assets).

14. Even if we were to credit TexStar's account of pre-filing reliance on an oral commitment from Republic, we further agree with the *I.D.* that TexStar failed to demonstrate that it received reasonable assurance of an \$8 million loan from that contact. As we have often stated:

[I]n order for the Board to determine that an applicant has "reasonable assurance" of "committed sources of funds" from a lending institution, we will review the following factors: Whether . . . the prospective borrower has provided the bank with [the borrower's assets, credit history, current business plan, and similar] data, and the bank is sufficiently satisfied with this financial information (*e.g.*, collateral guarantees, *see Chapman Radio and Television Co.*, 70 FCC 2d 2063, 2072 (1979)) that, *ceteris paribus*, a loan in the stated amount would be forthcoming, and that the borrower is fully familiar with, and accepts the terms and conditions of the proposed loan (*e.g.*, payment period, interest rate, collateral requirements, and other basic terms). Short of these ordinary fundamentals, it would be difficult to infer "reasonable assurance" from a "committed source." In other words, central to any successful "reasonable assurance" showing of a loan from a financial institution is that the "individual qualifications" of the borrower have been preliminarily reviewed. *Christina Communications*, 2 FCC Rcd 1971, 1974 (1987), that

adequate collateral has been demonstrated, *Chapman Radio, supra*, and that the tentative terms of the loan are specifically identified and are satisfactory to both borrower and lender.

Scioto Broadcasters, 5 FCC Rcd 5158, 5160 (Rev. Bd. 1990), *rev. denied*, 6 FCC Rcd 1893, *recon. dismissed*, 6 FCC Rcd 4626 (1991), *aff'd by judgment sub nom. Mid-Ohio Radio, Ltd. v. FCC*, No. 91-1418 (D.C. Cir. March 26, 1993); *see also Liberty Productions*, 7 FCC Rcd 7581, 7584 (1992).

15. TexStar admits that its discussions with Republic's Guzman included no information on Guerra-Cox's personal finances or net worth, but argues that the commitment was based instead on the value of the project. However, Guzman had little knowledge of the project's value, had no background in broadcast lending, performed no research on the market, and did not know whether Guerra-Cox had any experience in broadcasting. Tr. 2459-61, 2468, 2500, 2517. He had only Guerra-Cox's spoken assurances on the value of the Fredericksburg facility, which were in turn based on her own unsupported assumptions, and lacked specific information on the proposal, its costs, the value of its assets, or its expected revenues. *S.I.D.*, ¶¶ 17-18; Tr. 1913-23, 1939-42, 1954-55, 1963-64, 2153-58, 2225-26, 2460. *Compare Welch Communications, Inc.*, 8 FCC Rcd 1285, 1286 (1993) (reasonable assurance where MESBIC independently determined via-

gaged him in a three-minute conversation about the property. Frontier then filed its application on February 12th. *I.D.*, ¶¶ 64-68.

17. The ALJ added a site availability issue against Frontier based on declarations by Honig, the site's owner, that he had given only Global permission to use his land and that he had not discussed or reached any understandings with Frontier on the use of his property. *Memorandum Opinion and Order*, FCC 87M-2654, released October 23, 1987. Honig did not appear at the hearing, but Johnson testified that he had obtained reasonable assurance from him as a result of the single telephone contact. *I.D.*, ¶ 66. The existence of the call to Honig is supported by a telephone bill extract and Johnson's contemporaneous notes which reflect (TexStar Exh. 14):

Mr. Honig said property "was spoken for". Asked him if it didn't work out if he would negotiate [sic]. He said "next year."

Although Johnson could no longer recall the specifics of their conversation, he testified that after Honig's initial response that the property was already "spoken for," Johnson told him that Frontier was likely to win the proceeding and asked whether he would make with Frontier "[w]hatever deal he made with [Global]." Tr. 1006. Johnson understood from Honig that he would be agreeable to

with the site owner's agent. Frontier posits that reasonable assurance merely requires "some indication of the property owner's favorable disposition toward making an arrangement with the applicant." Frontier Exceptions at 8.

20. We disagree that Frontier has satisfied the Commission's requirements. A closer reading of *National Innovative* reveals that the assurance for the site, on which there was an existing tower, was based on three telephone conversations and later confirmed in writing. 2 FCC Rcd at 5641-43. Here, by contrast, we have no written confirmation or other corroboration that the site was made available to Frontier. Most important, however, is the fact that Johnson's own notes indicate that he and Honig agreed only to discuss in the future, in the event that Frontier received the permit, whether the land would be available to it, and under what terms. Thus, Honig, far from evincing a favorable disposition toward making an arrangement with Frontier, merely indicated a willingness to discuss with him in the future the possibility of making an arrangement. Although the Commission's standard for reasonable assurance of site availability is indeed a liberal one, it does require "some clear indication from the landowner that he is amenable to entering into a future arrangement with the applicant" for the use of the site. *Barry Skidelsky*, 7 FCC Rcd 1, 7 (Rev. Bd. 1992) (quoting *Elijah Broadcasting Corp.*, 5 FCC Rcd 5350, 5351 (1990)) (subsequent history omitted). Here, Johnson's contemporaneous notes indicate that Honig was, at most, willing to discuss site availability in the future. This dialogue clearly falls short of the Commission's minimum requirement that the applicant and landowner reach "a meeting of the minds resulting in some firm understanding as to the site's availability." *Genesee Communications, Inc.*, 3 FCC Rcd 3595, 3595 (Rev. Bd. 1988); see also *National Communications Industries*, 6 FCC Rcd 1978, 1978-79 (Rev. Bd. 1991) modified on other

ing that no formal divestiture commitment was necessary because the LPTV facility will be automatically displaced as a consequence of the initiation of operation of the Fredericksburg facility here at issue. Because, it explains, KO2MX transmits from within the Grade B contour of FC2's proposed co-channel television station, it will be forced off the air by operation of § 74.703 of the Commission's rules, which requires an LPTV licensee to suspend operations in the event that it is unable to resolve interference with a full power television facility. FC2 Exceptions at 6-9. Global and Stonewall argue that the *I.D.* should have given a more weighty demerit due to the proximity of the media interest to Fredericksburg. Global Exceptions at 39; Stonewall Exceptions at 18-19.

23. Diversification of control of the media of mass communications is a factor of primary significance in the comparative analysis. *Policy Statement*, 1 FCC 2d at 394. In evaluating the effect of other media interests on an applicant's comparative proposal, the Commission generally considers the size and nature of the ownership interest; the location of the interests relative to the community of license; and the significance of the interest in terms of the area covered, the size of the audience (or circulation), and other media there present. *Id.* at 394-95; see also, e.g., *Caldwell Broadcasting Corp.*, 104 FCC 2d 438, 439-40 (1986). In decisions examining the weight to be accorded to interests in low power television facilities, a diversification demerit of minimal to slight weight has been assessed due to the secondary nature of the LPTV service, its inherently limited coverage potential, its minor significance in the media marketplace, as well as the distance of the facilities held to those requested. See *Mark L. Wodlinger (Billings, MT)*, 3 FCC Rcd 3139, 3142 (Rev. Bd. 1988) (proximity of in-state and adjacent state LPTV facilities "offset by reduced significance accorded LPTV facilities vis a vis full power

co-channel Fredericksburg facility. See 47 CFR § 74.703; cf. *Neighborhood TV Co., Inc.*, 100 FCC 2d 1396 (1985) (returning LPTV application due to predicted interference to authorized full power television station); *Garnerlynn Communications*, 99 FCC 2d 1176 (1984) (same). Because the slight diversification demerit assessed against FC2 does not prove comparatively fatal to that application, see *infra* ¶ 40, FC2's assertion that the demerit should be reduced or eliminated need not be decided. FC2 Exceptions at 5-11. See *Colonial Communications, Inc.*, 6 FCC Rcd 2296, 2296 (1991) (agency need not decide questions not relevant to ultimate decision) (quoting *Deep South Broadcasting Co. v. FCC*, 278 F.2d 264, 266 (D.C. Cir. 1960)) (subsequent history omitted).

COMPARATIVE COVERAGE

25. The *I.D.* awarded a moderate-to-substantial comparative coverage preference to FC2 and Widsten over Stonewall for their superior coverage of underserved areas — areas currently receiving four or fewer over-the-air television signals — as well as for their greater overall coverage. *I.D.*, ¶ 149. Each of the applicants was also accorded a substantial comparative coverage preference over Global due to its "minute" service (service to less than 200 persons) to underserved areas and its far lesser overall coverage. *Id.* at ¶ 151. The *I.D.* found that the proposals would provide the following coverage (*id.* at ¶ 123-24):

Total Areas and Populations Served

Areas Served (sq. mi.)

Applicant	First	Second	Third	Fourth	Fifth
Global	none	168	714	947	772
FC2	none	293	1,591	1,316	867
Widsten	none	356	1,855	1,378	900
Stonewall	none	200	977	1,188	837

Populations Served (1980 census)

Applicant	First	Second	Third	Fourth	Fifth
Global	none	168	4,585	2,843	20,244
FC2	none	615	8,051	5,196	20,565
Widsten	none	586	9,373	5,956	20,623
Stonewall	none	210	5,858	5,362	20,266

This correction to the underserved area coverage data does not alter the *I.D.*'s comparative ranking of the applicants, although it does indicate that Global will provide more than "minute" coverage to underserved areas. Tr. 1828-29 (Oral Arg.); Bureau Reply Exceptions at 4.

27. The analysis of underserved area coverage was properly predicated on the Commission's then-existing policy of excluding from consideration coverage by noncommercial educational television stations. Following the release of the *I.D.*, however, the Commission modified that policy and announced that such signals should henceforth be included in computations of underserved area coverage. *Channel 32 Broadcasting Co.*, 6 FCC Rcd 5188, 5188-89 (1991), *recon. dismissed*, 7 FCC Rcd 1694 (1992), *aff'd by judgment sub nom. Kansas City TV 62 Limited Partnership v. FCC*, No. 91-1491 (D.C. Cir. May 10, 1993). Because the inclusion of noncommercial signals could diminish the comparative coverage credit received by the applicants in this proceed-

Applicant	Area (sq. mi.)	Population
Global		
FC2		
Widsten		
Stonewall		

which are essentially untimely exceptions to the *I.D.*'s award of coverage preferences. These assertions are entitled to no consideration pursuant to 47 CFR § 1.277(a). See *F.E.M. Ray, Inc.*, 7 FCC Rcd 4606, 4606 (1992); *Edwin A. Bernstein*, 6 FCC Rcd 6841, 6843 n.1 (Rev. Bd. 1991). Finally, in lieu of comments, FC2 submitted on September 16, 1992, a contingent motion to reopen the record to receive an "up-to-date" comparative coverage study based on current station contours and the 1990 census. Relying on the data contained in its proffered exhibit, FC2 maintains that it should receive a substantial coverage preference for its superior provision of first and second services. FC2 Motion to Reopen at 5. Global, Stonewall, and the Bureau oppose the motion.

29. *Discussion.* The most substantial preferences for comparative coverage are reserved for applicants who propose transmission of a first or second service (known respectively as white and grey area service) to their service areas. See *FBC, Inc.*, 95 FCC 2d 256, 259-61 (Rev. Bd. 1983) (substantial preference for provision of first television service to 2,309 persons and second service to 355 persons); *Communications Properties, Inc.*, 92 FCC 2d 45, 49 (Rev. Bd. 1982) (moderate preference for provision of second service to 4,456 persons), *rev. denied*, FCC 83-230, released July 7, 1983. The Commission accords a lesser preference to applicants providing new third, fourth, and fifth services to substantial populations. See *Daytona Broadcasting Co., Inc.*, 97 FCC 2d 212, 231-32 (Rev. Bd. 1984) (slight-to-moderate preference to applicant proposing new third, fourth, and fifth television services to 85,353 more persons than opponents, as well as greater overall coverage) (subsequent history omitted); *Radio Jonesboro, Inc.*, 96 FCC 2d 1106, 1112-13 (Rev. Bd. 1984) (slight preference for provision of third and fourth services to 3,616 more persons than opponent), *rev. denied*, 100 FCC 2d 941 (1985). A slight preference may also be awarded to applicants providing substantially greater overall coverage to well-served areas. See *Beach Broadcasting Limited Partnership*, 6 FCC Rcd 4485, 4485 (1991) (marginal preference for 22% differential in overall population service); *Simon Geller*, 90 FCC 2d 250, 276 (1982) (slight preference to applicant with four times greater coverage to well-served areas) (subsequent history omitted); *Christian Broadcasting of the Midlands, Inc.*, 99 FCC 2d 578, 583 (Rev. Bd. 1984) (slight preference for 24% coverage differential to well-served areas) (subsequent history omitted). Based on our analysis of the corrected coverage data and governing precedent, we agree with the exceptors that the *I.D.*'s award of coverage preferences was exaggerated. We conclude, as amplified below, that FC2, Widsten, and Stonewall merit a slight-to-moderate coverage preference over Global and that FC2 and Widsten should receive a preference of the same weight over Stonewall.

30. FC2, Widsten, and Stonewall's proposals provide more than five times greater overall coverage than Global and they therefore deserve, as Global concedes, a slight comparative preference for superior service to well-served areas.⁴ These applicants are additionally entitled to further

credit for their greater service to underserved areas relative to Global. FC2 and Widsten propose more second service than Global (615 and 586 persons compared to 168), and significantly more third and fourth services (combined totals of 13,247 and 15,329 persons compared to Global's 7,428). Stonewall proposes second, third, and fourth services to 11,430 persons compared to Global's 7,596. Although FC2 and Widsten, and to a lesser extent, Stonewall, each propose larger grey area service, the numbers involved are too slight to warrant the award of a moderate preference. See *Northern Sun Corp.*, 100 FCC 2d 889, 894 (Rev. Bd. 1985) (very slight preference awarded for provision of second nighttime aural service to 242 persons and a third and fourth service to 391 more persons than opponent) (subsequent history omitted); *Christian Broadcasting*, 99 FCC 2d at 583 (first service to 180 persons too small to warrant a substantial preference); *Colorado West Broadcasting, Inc.*, 57 FCC 2d 526, 529 (Rev. Bd. 1976) (first nighttime service to 617 more persons than opponent too small to warrant a decisive preference). Accordingly, FC2, Widsten, and Stonewall each receive an additional slight preference for their superior coverage of underserved areas. When combined, the slight preferences for overall coverage and underserved area coverage yield FC2, Widsten, and Stonewall a slight-to-moderate comparative coverage preference over Global. See *Marlin Broadcasting*, 4 FCC Rcd at 7956 (slight-to-moderate preference for greater third, fourth, and fifth services and overall coverage); *Metro Broadcasting, Inc.*, 99 FCC 2d 688, 699 (Rev. Bd. 1984) (slight-to-moderate preference for provision of greater fourth and fifth services and overall coverage) (subsequent history omitted).

31. FC2 and Widsten also merit, at most, a slight comparative advantage over Stonewall for their greater overall coverage of well-served areas (a differential of approximately 30%). See *Cuban-American Ltd.*, 2 FCC Rcd 3264, 3270 (Rev. Bd. 1987) (slight preference for coverage differential of almost 20%) (subsequent history omitted); *Christian Broadcasting*, 97 FCC 2d at 583 (slight preference for coverage differential of 24%). They warrant a further slight preference for their provision of greater second service than Stonewall (405 more persons by FC2; 376 more persons by Widsten) and superior third service (2,193 more persons by FC2; 3,515 more persons by Widsten). See *White Mountain FM, Inc.*, 54 RR 2d 1465, 1466 (Rev. Bd. 1983) (slight-to-moderate preference for provision of second daytime aural service to 1,258 persons, compared to opponent's 215 persons, and second night service to 3,150, compared to opponent's 397) (subsequent history omitted); *Radio Jonesboro*, 96 FCC 2d at 1112-13 (slight preference awarded for nighttime service to 171 more persons and combined third and fourth services to 3,616 more persons than opponent). Thus, FC2 and Widsten receive a slight-to-moderate coverage preference relative to Stonewall.

32. In so concluding, we deny as speculative the exceptions regarding the permanence of FC2's site proposal. See *Beach Broadcasting*, 6 FCC Rcd at 4485-86 (denying as speculative contention that opponent should not receive

⁴ FC2 urges the Board to award it a moderate (or stronger) coverage preference for its 850% greater overall coverage compared to Global, a difference, it asserts, that is of an unprecedented dimension. FC2 Exceptions at 20-21 n.30. We decline to depart from well-established precedent that any degree of superior overall coverage of well-served areas merits no more than a slight preference in the rubric of the Commission's standard

comparative issue. See *Simon Geller*, 90 FCC 2d at 276 (only slight preference for four-fold greater overall coverage because "the significance of this superiority is diminished by the existence of at least five other aural services available both day and night in that area") (subsequent history omitted); *Daytona Broadcasting*, 97 FCC 2d at 232.

coverage preference because it may seek to upgrade its facilities in the future); *Kennebec Valley*, 2 FCC Rcd at 1240-41 (rejecting as speculation and surmise argument that coverage preference should be denied due to conditional FAA approval). We also reject, for reasons detailed in previous cases, the requests to include alternative video sources in our analysis of underserved area coverage. See *WCVQ, Inc.*, 7 FCC Rcd 4849, 4851 (Rev. Bd. 1992); *Washoe Shoshone Broadcasting*, 3 FCC Rcd 5631, 5634 (Rev. Bd. 1988) (and cases cited therein), *rev. denied*, 5 FCC Rcd 5561 (1990). Finally, we deny FC2's motion to reopen the record and reject its proffer of an updated engineering study. Because FC2 was a party to the joint engineering supplement submitted only one month earlier, it may not now complain that the study should be disregarded. See *Washoe Shoshone*, 5 FCC Rcd at 5564 (former co-sponsors of joint engineering exhibit not permitted to rebut exhibit); *WCVQ*, 7 FCC Rcd at 4851 (same); see also *Daytona Broadcasting*, 97 FCC 2d at 225-30 & n.42 (post-hearing updated coverage data not considered due to administrative finality doctrine).

INTEGRATION

33. *Widsten*. Widsten, an individual applicant, excepts to the *I.D.*'s rejection of his proposal to integrate into the management of the proposed Fredericksburg facility on a full-time basis. Widsten Exceptions at 3-7. Widsten accepts, however, the findings of facts supporting the ALJ's conclusion. *Id.* at 3. To wit: shortly before filing the instant application, Widsten tendered, on October 2, 1986, an application for authority to construct a new FM station at Oro Valley, Arizona. *I.D.*, ¶ 79. In an exhibit to that application Widsten stated his intention to relocate to Oro Valley and to serve as the Arizona station's full-time general manager. FC2 Exh. 12. Widsten filed his Fredericksburg application four months later on February 12, 1987. On October 8th of that year, the date set by the Presiding Judge for the filing of integration and diversification statements in the Fredericksburg proceeding, Widsten stated his intention to remain in Texas and to serve as the full-time general manager of the Fredericksburg station. *I.D.*, ¶¶ 79, 144. On January 15, 1988, after his deposition, Widsten amended the Oro Valley application to withdraw his integration statement for that facility. *Id.* at ¶ 79. The *I.D.* concluded that because Widsten's Fredericksburg integration proposal was "completely inconsistent with his outstanding, unretracted full-time Oro Valley integration proposal" on the October 8, 1987 integration statement exchange date, the Fredericksburg proposal could not be credited. *Id.* at ¶ 145.

34. Widsten maintains that the dual integration proposals are not inconsistent; that he never formally proposed to

proposals), *rev. denied*, 60 RR 2d 776 (1986), *aff'd by judgment sub nom. Up North Broadcasting Co. v. FCC*, 814 F.2d 774 (D.C. Cir. 1987). In light of the long line of cases clearly disallowing contingent or conflicting integration proposals, we affirm the ALJ's conclusion. *Goodleusville Broadcasting Co., Inc.*, 8 FCC Rcd 57, 58 (Rev. Bd. 1992) (rejecting integration proposal of principal who had a conflicting integration proposal in another pending Commission proceeding); see also, e.g., *Charisma Broadcasting Corp.*, 8 FCC Rcd 864, 866-67 (1993) (rejecting integration proposal contingent on losing an election to U.S. Congress); *Northern Sun*, 100 FCC 2d at 890-91 (rejecting integration proposal contingent on the Commission's denial of another application).

35. FC2. Although the ALJ awarded FC2 100% quantitative integration credit for its proposal to integrate sole general partner Bob A. Roth into the full-time management of the Fredericksburg station as general manager, he excluded FC2 from the final comparative analysis of the applicants due to FC2's receipt of a slight diversification demerit for Roth's involvement in an LPTV permit for Channel 2 at San Antonio, Texas. *I.D.*, ¶¶ 138, 141, 152. In view of FC2's comparative coverage advantages over Stonewall and Global, *supra* ¶¶ 29-31, and, as amplified below, its superior qualitative attributes, *infra* ¶¶ 38-39, we find that the ALJ erroneously omitted FC2 from the ultimate comparative analysis, and, as a consequence, failed to determine that FC2, not Stonewall, is the superior applicant.

36. Global, TexStar, and Stonewall except to the award of 100% integration credit to FC2 arguing that its limited partnership agreement fails to adequately insulate limited partner B.J. McCombs; that McCombs may become active in the partnership through the participation of his agents or employees; and that it is unlikely that Roth will refrain from communicating with McCombs regarding the day-to-day affairs of the partnership in view of their long-standing personal and business relationships. Global Exceptions at 33-39; TexStar Exceptions at 27-29; Stonewall Exceptions at 14-17. The exceptors assert that a provision of FC2's limited partnership agreement permitting the general partner to contract for services with individuals or entities connected to the limited partner fails to comport with the guidelines of *Attribution of Ownership Interests*, 97 FCC 2d 997 (1984), *recon. granted in part*, 58 RR 2d 604 (1985), *further recon. granted in part*, 1 FCC Rcd 802 (1986), thus requiring the attribution of McCombs' 80% equity interest. TexStar further contends that the agreement fails to specifically constrain the limited partner from voting on the removal of the general partner. TexStar Exceptions at 28.

37. We disagree. FC2's partnership agreement contains the full complement of insulation safeguards required by

provisions might potentially be employed to circumvent the insulation provisions is wholly speculative and therefore insufficient to support attribution of the passive interest and associated reduction of FC2's quantitative credit. We further deny the exception that Roth and McCombs' friendship and other business associations provide an independent basis for attributing McCombs' interest. See *Anchor Broadcasting Limited Partnership*, 6 FCC Rcd 721, 721-22 (1991) (limited partnership interests not attributed where limited partners were friends and business associates of general partner), *remanded on other grounds sub nom. Bechtel v. FCC*, 957 F.2d 873 (D.C. Cir. 1992) (further subsequent history omitted).⁵ Because we have found that McCombs' interests are not attributable, we correspondingly deny the exceptors' assertion that McCombs' media interests should be factored into the assessment of a diversification demerit against FC2. See *Daytona Broadcasting Co., Inc.*, 103 FCC 2d 931, 934-35 (1986).

38. *Qualitative Evaluation.* Operating under the assumption that the ALJ correctly awarded Global and Stonewall full quantitative credit,⁶ we must compare the attributes of Global, Stonewall, and FC2 to determine the comparatively superior applicant under the integration criterion. None of the three benefit from minority participation, and the credit previously accorded Global and Stonewall for female integration is disallowed. See *Lamprecht v. FCC*, 958 F.2d 382 (D.C. Cir. 1992). Because FC2 and Stonewall merit a substantial preference over Global for their principals' local residence and civic involvement, Global's proposal, which offers only future residence and broadcast experience, is clearly third in the qualitative comparison. *I.D.*, ¶ 126, 152. See, e.g., *Ronald Sorenson*, 6 FCC Rcd 1952, 1953-54 (substantial preference received under combined local residence/civic involvement criterion outweighs credit for broadcast experience), *recon. dismissed*, 6 FCC Rcd 6901 (1991); *Eugene Walton*, 6 FCC Rcd 6071, 6078 (Rev. Bd. 1991 (promise to move to community of lesser weight than present service area residence) (subsequent history omitted)).

39. The *I.D.* awarded FC2 substantial qualitative integration credit for general partner Roth's 65-year residence within the Grade B contour and his "impressive record" of civic participation. *I.D.*, ¶¶ 76-77, 138. A further slight enhancement was granted for Roth's "extensive" broadcast experience since 1946. *Id.* at ¶¶ 72-74, 138. Stonewall is a two-tier corporation with three equal voting shareholders, Robert N. Simmons, Marian R. Nixon, and Marquis E. Whittington. *Id.* at ¶ 87. The ALJ found that Stonewall's integration proposal is substantially enhanced by Nixon's life-long Fredericksburg residence and active civic involve-

ment; moderately enhanced by Whittington's service area residence (17 years) and (limited) civic participation, and further slightly enhanced by his promise to move to Fredericksburg; and is moderately enhanced by Simmons' four-year service area residence and (minimal) civic participation, and further slightly enhanced by his broadcast experience and promise of future local residence. *Id.* at ¶¶ 103, 109-13, 115-21, 147. In the absence of a comparison of Stonewall and FC2's proposals by the ALJ, we find that although they are both impressive on the combined local residence/civic involvement factor, FC2's proposal is nevertheless preferred due to its 100% general partner's longer residence and greater civic involvement than that of Stonewall's voting stockholders, only 67% of which possess a relatively substantial local background (Nixon and Whittington). See generally *Rebecca L. Boedker*, 6 FCC Rcd 2557, 2558-59 (1991) *aff'd by judgment*, 961 F.2d 963 (D.C. Cir. 1992); see also, e.g., *Ronald Sorenson*, 6 FCC Rcd at 1954 (where both applicants have long-term residence, applicant with greater and continuing civic involvement prevails); *Safe Broadcasting Corp.*, 6 FCC Rcd 6548, 6551 (Rev. Bd. 1991) (significantly longer service area residence is preferred over shorter residence in community of license) (subsequent history omitted); *Beach Broadcasting Limited Partnership*, 6 FCC Rcd 885, 886 (Rev. Bd. 1991) (longer life-long residence prevails over shorter life-long residence) (subsequent history omitted). While the two applicants are close, even if they were adjudged equal under this factor, FC2's superior broadcast experience would be enough to tip the comparative scales in that applicant's favor. See *Harry S. McMurray*, FCC 93R-17, slip op. at 8 ¶ 24, released May 14, 1993 (broadcast experience dispositive: applicant with quantitatively and qualitatively superior experience prevails); *Threshold Communications*, 7 FCC Rcd 4554, 4556 (Rev. Bd. 1992) (same); *James and Sharon Deon Sepulveda*, 3 FCC Rcd 9, 10 (Rev. Bd. 1988) (same). Accordingly, FC2 receives a slight preference under the integration criterion.

FINAL EVALUATION

40. FC2 receives a slight-to-moderate preference under the comparative coverage factor and a further slight preference under the integration criterion over its nearest competitors, Stonewall and Global. See *supra* ¶¶ 29-31, 39. These preferences are partially offset by FC2's slight diversification demerit. See *supra* ¶ 24. Generally, of the three factors underlying the comparative evaluation, diversification is of greatest significance and will prevail over any other equal or lesser comparative preference. See *Christian Broadcasting*, 99 FCC 2d at 583-84. Here, however, we

⁵ Because the *Bechtel* court has not yet reviewed the Commission's latest *Anchor* order, see also *Flagstaff Broadcasting Union v. FCC*, 979 F.2d 1566 (D.C. Cir. 1992), Board Member Blumenthal concurs only tentatively in the language of this paragraph. See also, e.g., *Harry S. McMurray*, FCC 93R-17, released May 14, 1993 (separate statement).

⁶ Because we ultimately find that FC2's proposal is comparatively preferred to Stonewall's on grounds of greater qualitative enhancements to integration and superior coverage, *infra* ¶ 40, we need not resolve the exceptions regarding Stonewall's financial proposal, the effectuation of its integration proposal, or the soundness of its articles of incorporation. Global Exceptions at 6-13; TexStar Exceptions at 37-41; FC2 Exceptions at 30-36; Widsten Exceptions at 8-15. We observe only that applicant financier and 70% non-voting stockholder Rebecca Lambert's

function of reviewing and paying the applicant's bills, in addition to her receipt of frequent reports from the voting stockholders on the application's progress, would appear sufficient to impute active status to her interest. *I.D.*, ¶¶ 96-98; Tr. 1495-96, 1576-92, 1650, 1677-78; FC2 Exh. 18. See *Richardson Broadcast Group*, 7 FCC Rcd 1583, 1587 ("the payment of bills is ordinarily a management function"; limited partner's involvement therein warrants further hearing to determine whether sufficiently insulated) (subsequent history omitted); *Isis Broadcast Group*, 7 FCC Rcd at 5131-32 (interest of non-voting stockholder attributed where he controlled applicant's funding including the payment of bills); see also generally *Weyburn Broadcasting Limited Partnership v. FCC*, 984 F.2d 1220, 1233-34 (D.C. Cir. 1993).

conclude that FC2's slight-to-moderate coverage advantage combined with its slight integration edge are sufficient to outweigh the slight diversification demerit, which is premised only on FC2's LPTV station interest. *Accord Las Americas Communications, Inc.*, 6 FCC Rcd 1507, 1510, 1513 n.25 (1991) (subsequent history omitted); *Gilbert Broadcasting Corp.*, 91 FCC 2d 450, 469-70 (1982), *recon. denied*, FCC 83-30, released January 25, 1983; *Cleveland Television Corp.*, 91 FCC 2d 1129, 1143 (Rev. Bd. 1982), *rev. denied*, FCC 83-235, released May 18, 1983, *aff'd*, 732 F.2d 962 (D.C. Cir. 1984). Thus, FC2 is the superior applicant under the standard comparative issue and its application for the Fredericksburg station should therefore be granted.

41. ACCORDINGLY, IT IS ORDERED, That the petitions for leave to amend filed by Global Information Technologies, Inc. on November 22, 1989, December 14, 1989, and June 4, 1990; by Hal S. Widsten on August 8, 1989, September 8, 1989, and November 16, 1989; and by Stonewall Broadcasting, Inc. on February 16, 1993, ARE GRANTED, and the corresponding amendments ARE ACCEPTED.

42. IT IS FURTHER ORDERED, That the request for official notice filed by TexStar Communications, Ltd. on July 21, 1989, IS GRANTED; that the motion for leave to file supplement to exceptions filed by TexStar Communications, Ltd. on August 31, 1992, IS DENIED, and the supplemental exceptions ARE DISMISSED; that the Mass Media Bureau's motion to dismiss comments of Stonewall Broadcasting, Inc. and Global Information Technologies, Inc. filed on August 25, 1992, IS DENIED; and that the contingent motion to reopen the record filed by Fredericksburg Channel 2 on September 16, 1992, IS DENIED.

43. IT IS FURTHER ORDERED, That the application of Fredericksburg Channel 2 (File No. BPCT-870212KP) for a construction permit for a new television station at Fredericksburg, Texas, IS GRANTED, and that the applications of Global Information Technologies, Inc. (File No. BPCT-861219KG), TexStar Communications, Ltd. (File No. BPCT-870212KM), Frontier Broadcasting, Inc. (File No. BPCT-870212KN), Hal S. Widsten (File No. BPCT-870212KT), and Stonewall Broadcasting, Inc. (File No. BPCT-870212KU) ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Joseph A. Marino
Chairman, Review Board

EXHIBIT B

Memorandum from Carl B. Fry, June 7, 1993.

CARL B. FRY
BARRY A. WALLER
GEORGE R. MCGANN
ROBERT H. GRIFFIN, JR.
BRYAN L. JEFFRIES

OF COUNSEL:
DAVID M. BUDA
WILLIAM M. HAYDEN

Fry & Waller Co., U.P.A.

Attorneys and Counsellors at Law

35 EAST LIVINGSTON AVENUE, COLUMBUS, OHIO 43216-3762

TELEPHONE 614/226-8300

FAX NO. 614/226-8880

MEMORANDUM

Via TELEFAX and U.S. MAIL

DATE: June 7, 1993
TO: Shelley Davis
Ardeth Frizzell
FROM: Carl B. Fry, Esq. *CF*
RE: Mid-Ohio Communications, Inc.
WBSY-FM
Lease of Assets
Revised Correspondence

* * * * *

Legal counsel for David Ringer telephoned me and requested that I prepare a letter similar to the one I prepared for each of you pursuant to your request for Mr. Ringer and forward it to his legal counsel for presentation to the F.C.C. He requested that I add additional language referring to the original correspondence I forwarded to all of you and advising that the original commitment remains in force.

Although I did not adopt the specific language that Mr. Ringer's legal counsel requested, I prepared an additional paragraph acceptable to his legal counsel and included it in the letter. I advised his legal counsel that I would revise your letters and include the same paragraph in them so that each of you has the same correspondence to present to the F.C.C.

EXHIBIT C

Letter from Arthur V. Belendiuk to Carl B. Fry, June 3,
1993.

Westerville

G.C.

JS 617

LAW OFFICES

SMITHWICK & BELENDIUK, P. C.

1990 M STREET, N.W.

SUITE 510

WASHINGTON, D.C. 20036

TELECOPIER

(202) 785-2804

TELEPHONE

(202) 785-2800

June 3, 1993

VIA FACSIMILE (614) 228-6680
& FIRST CLASS MAIL

CONFIDENTIAL CORRESPONDENCE

Mr. Carl B. Fry
Authorized Representative
Mid-Ohio Communications, Inc.
P.O. Box 14
Westerville, Ohio 43081

Re: Westerville, Ohio FM Proceeding

Dear Mr. Fry:

Pursuant to your telephone conversation yesterday with my associate, Shaun Maher, I am writing to ask your assistance with a matter that has been raised against my client, David A. Ringer, by Ohio Radio Associates, Inc. ("ORA"), one of the competitors for the new FM station at Westerville, Ohio. ORA is not specifying the former WBBY tower location for their proposed operation and they have challenged Mr. Ringer (as well as the other applicants proposing the WBBY tower) as to whether he obtained the necessary "reasonable assurance" from your company for the use of the WBBY tower facilities. Despite the fact that we provided ORA with a copy of your December 17, 1991 letter to Mr. Ringer, they nevertheless challenge the sufficiency of this showing.

As Mr. Maher noted during yesterday's telephone conversation, we would appreciate if you could provide Mr. Ringer with a letter, similar to the one that you recently sent to Shellee Davis and Ardeth Frizzell. However, in an effort to dispel other issues that ORA has raised, I would appreciate if you could add an extra sentence or paragraph in the letter where you describe what happened after you received Mr. Ringer's financial information in early January, 1992. Such a sentence/paragraph might read:

"In the December 17, 1991 letter, I requested that, within sixty (60) days of my letter, that you provide a showing of financial qualifications to enter into a lease of the tower site and certain station equipment. I have reviewed this matter, and my records indicate that your financial showing was received

SMITHWICK & BELENDIUK, P.C.

Mr. Carl B. Fry

June 3, 1993

Page 2

before the sixty (60) day deadline, that such showing was satisfactory and that the December 17, 1991 commitment letter remains in force to this day."

Feel free to change any of the language of this statement into your own words. The idea that we are trying to convey is that you were satisfied with Mr. Ringer's showing and that the December 17, 1991 letter was never cancelled. I would appreciate your prompt attention to this matter, as the deadline for responding to ORA's pleading is Wednesday, June 9, 1993. Perhaps you could fax a copy of your proposed letter to me tomorrow, before the end of day, so that I can review it before you send it to me.

I would also appreciate if you would address your letter to Mr. David A. Ringer at his current address: Mr. David A. Ringer, 417 West Sixth Avenue, Columbus, Ohio 43201. In order to save time, please send the original of the letter to our office at the above-referenced address so that we can include it with our response.

Attached, as per your request, is a copy of Mr. Ringer's current financial statement, as of April 30, 1993, which evidences his continued ability to enter into the tower and equipment leases. I appreciate your cooperation on this matter and if you have any questions, please feel free to call me or Mr. Maher at any time.

Very truly yours,



Arthur V. Belendiuk

Counsel for David A. Ringer

AVB/pjt.0603B
Attachments

DAVID A. RINGER
FINANCIAL STATEMENT
APRIL 30, 1993

DAVID A. RINGER
COLUMBUS, OHIO

WE HAVE COMPILED THE ACCOMPANYING STATEMENT OF FINANCIAL CONDITION OF DAVID A. RINGER AS OF APRIL 30, 1993 IN ACCORDANCE WITH STANDARDS ESTABLISHED BY THE AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS.

A COMPILATION IS LIMITED TO PRESENTING IN THE FORM OF FINANCIAL STATEMENTS INFORMATION THAT IS THE REPRESENTATION OF THE INDIVIDUALS WHOSE FINANCIAL STATEMENTS ARE PRESENTED. WE HAVE NOT AUDITED OR REVIEWED THE ACCOMPANYING FINANCIAL STATEMENTS AND, ACCORDINGLY, DO NOT EXPRESS AN OPINION OR ANY OTHER FORM OF ASSURANCE ON THEM.

Reub, MacLean & Steinhilber

JUNE 3, 1993

DAVID A. RINGER
STATEMENT OF FINANCIAL CONDITION
APRIL 30, 1993

ASSETS

Cash \$ 4,933

Investments
Certificates of Deposit - Note B 250,000

DAVID A. RINGER
NOTES TO FINANCIAL STATEMENT
APRIL 30, 1993

Note A - Basis of Accounting

The accompanying financial statement include the assets and liabilities of David A. Ringer. Assets are stated at their estimated current values and liabilities at their estimated current amounts.

Note B - Certificates of Deposit

Certificates of deposit consist of the following:

Bank One, 7.42%, Due July 1, 1993	50,000
Citizens Bank of Ashville, 7.82%, Due October 1, 1992	100,000
Society Bank, 7.23%, Due September 1, 1996	50,000
Society Bank, 7.23%, Due September 1, 1996	<u>50,000</u>
Total Certificates of Deposit	<u>\$ 250,000</u>

Note C - Marketable Securities

The estimated current values of marketable securities are their quoted closing prices. Marketable securities consist of the following:

	4/30/93 Current Value
<u>Stocks</u>	
1,500 Shares Novell, Inc.	\$ 45,000
200 Shares Philip Morris COS Warrants	9,425
100 Shares Glaxo	1,838
500 Shares Third Financial Corp.	<u>8,000</u>
Total Stocks	64,263